

# RAJASTHAN HIGH COURT

Aalam Deen

Vs.

State of Rajasthan

S. B. C. W. P. No. 2705 of 2007

(Dinesh Maheshwari, J.)

06.04.2009

## ORDER

**Dinesh Maheshwari, J.**

1. The petitioner was elected as *Sarpanch, Gram Panchayat, Gandheli, Panchayat Samiti Nohar, District Hanumangarh*. However, a motion of no confidence came to be passed against him in the meeting dated 15-3-2007. Questioning the validity of the proceedings on the said motion of no confidence, the petitioner has preferred this writ petition; and according to the petitioner, the proceedings are vitiated for various reasons as noticed in brief herein below.

2. In the first place, the petitioner submits that the respondent No. 4 Smt. Bachcha Devi, who was the Ward Panch from Ward No. 7, was not entitled to participate in the proceedings relating to such no confidence motion for having already tendered her resignation on 2-1-2007 (Annex. 4) that was duly accepted on 23-2-2007 (Annex. 6) and thereby the seat from the said ward was declared vacant; and the requisite information in that regard was forwarded by the *Vikas Adhikari, Panchayat Samiti, Nohar* to the District Election Officer on 8-3-2007 (Annex. 7). It has been pointed out that earlier a notice was issued to the respondent No. 4 for the meeting convened for the purpose of motion of no confidence but then, such a notice was cancelled on 12-3-2007 (Annex. 8) for her resignation having been accepted and the seat of Ward No. 7 having been declared vacant.

3. The petitioner has averred that on 14-3-2007, the State Government proceeded to issue an order (Annex. 10) stating that the concerned Minister had purportedly stayed the order dated 23-2-2007 as passed by the *Vikas Adhikari, Panchayat Samiti, Nohar* on the basis of an affidavit filed by the respondent No. 4. The petitioner points out that

the respondent No. 4 was held entitled to and did participate in the proceedings on the said motion of no confidence only on the basis of such stay order; and contends that the alleged stay order, issued only a day before the scheduled meeting was nothing less than high-handedness only for the purpose for allowing the no confidence motion to be passed against the petitioner. It is submitted that the order dated 14-3-2007 deserves to be set aside and the proceedings of the meeting dated 15-3-2007 deserve to be quashed on this count alone.

4. It is further submitted that per Section 37(2) of the Rajasthan *Panchayati Raj Act*, 1994 ('the Act of 1994'), the written notice of intention to make the motion in prescribed form and signed by not less than one-third of the directly elected Members of the *Panchayati Raj* institution has to be delivered together with the copy of the proposed motion personally by any one of the Members signing the notice to the competent authority. However, according to the petitioner in the present case, the notice was delivered by one Om Prakash son of Khinya Ram who was not a Ward Member and not a signatory to the notice. According to the petitioner, the motion having been moved by an incompetent and unauthorized person, could not have been considered at all and the proceedings thereupon deserve to be quashed on this count alone.

5. It is also contended that per Rule 21 (2) of the Rajasthan *Panchayati Raj Rules*, 1996 ('the Rules of 1996'), such notice was required to be delivered to the Chief Executive Officer of Zila Parishad whereas in the present case, the notice was given to Shri B. L. Meharda, who was posted as Additional Chief Executive Officer. Thus, the petitioner contends, the notice of motion having not been delivered to the competent authority, the entire proceedings remain illegal and deserve to be quashed.

6. It is also feebly suggested that the minutes of the meeting do not disclose the mode of voting, and that as per the requirements of Section 37(3) (iii) of the Act of 1994, clear seven days notice of the meeting convened for the consideration of the motion was not given inasmuch as the notice was served on the son of the petitioner on 8-3-2007 for the meeting to be held on 15-3-2007 making it only six clear days after excluding the dates of issuance and receipt of the notice.

7. Except the contention relating to the respondent No. 4 other contentions have only been noted to be rejected. A perusal of the record makes out that the notice of intention of making the motion (Annex.2) accompanied by the proposed motion (Annex. 3) was moved by 9 Ward Members of the *Panchayat* concerned with

signatures of 8 Members and thumb impression of one of them. The notice so moved, apart from the signatures/thumb impressions of the concerned 9 Ward Members, carried further endorsements of identification; one by a lawyer (name not legible) and another by Sri Om Prakash son of Khinya Ram, resident of Ward No. 1, Gandheli. The said Shri Om Prakash had only identified the signatories of the notice; and there is no indication on the document produced by the petitioner that the notice itself was delivered by the said Shri Om Prakash. The contention that notice of motion was delivered by an incompetent and unauthorized person remains hollow and baseless.

8. So far delivery of notice to the Additional Chief Executive Officer is concerned, though the learned counsel for the petitioner attempted to argue with reference to a decision of this Court in the case of *Smt. Manjula v. State of Rajasthan and Ors.*,<sup>1</sup> that the notice could have been delivered only to the Chief Executive Officer, we being the competent authority, but such an argument remains untenable in the face of the provision contained in Section 82 of the Act of 1994. True it is that the notice is required to be delivered to the competent authority as per Section 37 (2) of the Act of 1994; and for the purpose of notice of motion of no confidence against *Sarpanch* of a *Panchayat*, the Chief Executive Officer is the competent authority per Rule 21 of the Rules of 1996 but then, by inserting an Explanation to sub-section (1) of Section 82 by Act No. 9 of the year 2000, the legislature has made it clear that the expression "Chief Executive Officer" includes an "Additional Chief Executive Officer". With insertion of the said explanation in the statute in the year 2000, the very basis of the decision in *Smt. Manjula's* case (*supra*) stands eclipsed; and the delivery of notice to the Additional Chief Executive Officer cannot be considered contrary to law particularly when such Additional Chief Executive Officer is discharging the duties of the Chief Executive Officer. At the relevant point of time, the respondents have explained, the post of Chief Executive Officer was lying vacant and the Additional Chief Executive Officer was discharging such duties. The motion in question cannot be held vitiated for having been delivered to the Additional Chief Executive Officer of the Zila Parishad concerned.

9. Then, there is no requirement under the Rules to disclose the mode of voting in the minutes of the meeting held for the purpose of considering the motion of no confidence. So far want of clear seven days' notice is concerned; the averments remain shaky and uncertain. The document (Annex. 1) does not show that the notice was received by the petitioner only on 8-3-2007 nor any such suggestion was made at the time of consideration of the motion. Such grounds do not make out a case for

interference in the proceedings in question.

10. However, having examined the material placed on record, this Court is clearly of opinion that the questioned motion of no confidence suffers from the fundamental vice of having been moved with active participation of the respondent No. 4 Smt. Bachcha Devi who was not at the relevant point of time, answering to the description of 'a Member' of the *Panchayat* concerned.

11. It is stated by the petitioner that the respondent No.4 tendered her resignation (Annex 4) on 2-1-2007 whereupon a notice (Annex 5) was issued by the *Vikas Adhikari Panchayat Samiti, Nohar* to her on 4-1-2007 pointing out that if not withdrawn within 15 days, the resignation shall stand accepted and the seat shall fall vacant and thereafter by the order dated 23-2-2007 the said *Vikas Adhikari* proceeded to declare the seat of Panch from Ward No. 7 vacant. It is contended that resignation of the respondent No. 4 having been accepted and the seat having been declared vacant, there was no occasion with the State Government to stay the operation of the order dated 23-2-2007, and it is further contended that the stay order dated 14-3-2007 was unauthorized and was calculated only to ensure success of the no confidence motion with participation of the respondent No. 4.

12. On the other hand, the respondent No. 4 contends that she is an illiterate lady that she had not submitted the resignation that her signatures had been forged on the alleged letter of resignation and an FIR had also been lodged in that regard; and that she had been appearing in the *Panchayat Samiti* since 2-1-2007 and it shows that she was not informed of any notice of resignation. The answering respondent has also submitted that in fact she had gone out for domestic work and upon coming back on 13-2-2007 did she receive a notice pasted on her house by which, her resignation was allegedly accepted and the seat was declared vacant. The respondent No. 4 has denied having received any notice dated 12-3-2007 and has further pointed out that upon receipt of the notice pasted on the house she made complaint to the State Government about herself being an illiterate lady and the petitioner having forged her resignation and thereupon, the State Government by its order dated 14-3-2007, stayed the operation of the order dated 23-2-2007.

13. In relation to the question of jurisdiction for an authority behind, the order dated 14-3-2007, the learned Government Counsel has referred to the provisions as contained in Section 97 of the Act of 1994 and contended that the Government has general powers of revision in respect of any proceedings of any *Panchayati Raj*

Institution and also the powers to stay execution of any decision or order prejudicial to any party. It has, therefore been contended that the order dated 14-3-2007 cannot be said to be without jurisdiction or unauthorized.

14. The petitioner has pointed out by way of rejoinder that the respondent No. 4 attended the *Panchayat* meetings only before issuance of the final order dated 23-2-2007 and not thereafter. During the course of submissions, it has been pointed out in relation to the FIR as lodged by the respondent No. 4 that the Investigating Agency ultimately submitted a negative final report.

15. Having regard to the subject matter of this writ petition that essentially relates to the validity of the proceedings on the motion of no confidence purportedly passed against the petitioner, and for the order proposed to be passed leaving the matter concerning resignation of the respondent No. 4 open for appropriate inquiry looking to the overall facts and circumstances, this Court does not consider it necessary to pronounce finally upon the contentions pertaining to the questions of authority and jurisdiction for making the order dated 14-3-2007; and for the purpose of this writ petition, we may proceed while assuming that the order dated 14-3-2007 does not suffer from want of authority or jurisdiction. However, having examined the matter in its totality, this Court is clearly of opinion that even if the order dated 14-3-2007 is taken on its face value, the same does not lend legality or credence to the motion of no confidence as moved by serving a notice to that effect on 1-3-2007 with respondent No. 4 being one of the signatories thereto.

16. Whether the letter of resignation (Annex. 4) bears the signatures of the respondent No.4 or not is also a matter entirely different and being essentially of factual dispute, this Court is not entering into the same but then, even when the respondent No. 4 denies her signatures on the said resignation letter, the fact of the matter remains that she was served with the notice dated 4-1-2007 (Annex. 5) by the *Vikas Adhikari, Panchayat Samiti, Nohar* pointing out the fact that she had tendered the resignation and if not withdrawn within 15 days the resignation shall stand accepted and the seat shall fall vacant. The copy of notice dated 4-1-2007 (Annex. 5) bears the signatures of the respondent No. 4 and she could dare not specifically deny such signatures on the said copy of notice dated 4-1-2007 (Annex. 5). The vague and uncertain averments as taken by the respondent No. 4 in paragraph 10 of her reply cannot be taken to be sufficient for a specific denial of her signatures put as token of receipt of the said notice. The respondent No. 4 in her reply to the writ petition, has stated that she received a notice pasted on her house whereby her resignation was accepted and the

seat was declared vacant after coming back on 13-2-2007. The said date of 13-2-2007 as stated in the reply does not even cor-relate with the date of such order issued by the Vikas Adhikari i.e. 23-2-2007.

17. All said and done, the fact of the matter had been that the *Vikas Adhikari, Panchayat Samiti, Nohar* did issue specific notice dated 4-1-2007 informing the respondent No.4 about the operation of the statutory provisions as contained in Section 36 of the Act of 1994; and even issued the order dated 23-2-2007, of acceptance of the resignation tendered by the respondent No. 4, and declared the seal of Panch from Ward No. 7 vacant. When the provisions of Section 36 came into operation after due notice to the respondent No. 4 and her resignation became effective and was even declared so under the order dated 23-2-2007, in the opinion of this Court the respondent No. 4 could not have acted as, nor could have been considered as, a Member of Gram *Panchayat*, Gandheli unless and until any specific declaration was made by a competent Court or Authority contrary to the effect of Section 36 and the order dated 23-2-2007.

18. The fundamentally fatal part of the matter in the entire proceedings is that the motion of no confidence was moved by serving a notice to that effect on 1-3-2007 with the respondent No. 4 being one of the signatories thereto. On this date, i.e., 1-3-2007, for the declaration dated 23-2-2007 on her resignation and for the operation of Section 36 of the Act of 1994, the respondent No. 4 was not a Member of the Gram *Panchayat* at all. On this date, i.e. 1-3-2007 nothing was available that could have arrested the operation of Section 36 of the Act of 1994 and the effect of the order dated 23-2-2007. Even the questioned stay order came to be passed only on 14-3-2007.

19. As observed hereinbefore, this Court is not entering into the validity of the order dated 14-3-2007 but at the same time, this Court is clearly of opinion that the said order dated 14-3-2007 cannot operate in the manner as if to accord ex post facto legality to the motion of no confidence moved on 1-3- 2007. On this date i.e. 1-3-2007 the respondent No. 4 was not an existing Member of the *Panchayat* concerned and such a fact had specifically been declared by the Vikas Adhikari by his order dated 23-2-2007. Viewed from any angle, the respondent No. 4 could not have moved the motion of no confidence on 1-3-2007; and this Court is clearly of opinion that the other Members could not have moved the motion on 1-3-2007 while joining the respondent No. 4 as a party to the same.

20. Expressing want of confidence in the Chairperson of a *Panchayati Raj* Institution being of drastic consequences and calculated to remove a duly elected person, specific measures have been provided in the Act of 1994 and the Rules of 1996 and looking to the nature and consequences of the action by and large such measures acquire mandatory character barring those relating to mere form or formalities. For being a valid one, such a motion of no confidence has to be moved by one-third of the directly elected Members; and, for the purpose of Section 37 (2). 'Members' could only be the existing Members and not the past Members or such persons who might be having some claim towards Membership but whose actual Membership is under serious doubt or dispute particularly for operation of the statute.

21. While striking down a no confidence motion for having not been initiated legally, this Court in the case of *Laxman Meena v. The State of Rajasthan and another* <sup>2</sup> has rather considered a no confidence motion to be malicious when moved by the Members whose qualifications were under question and pointed out.

"15. It may further be taken note of a vital fact that under The Rajasthan *Panchayati Raj* Act of 1994, a member is held disqualified to continue if he/she has given birth to a third child or more after November 1995 and in case a complaint has been lodged against such member an enquiry for holding such member disqualified has to be initiated. Such member may also be kept under suspension. In view of this provision the membership of such initiators of the motion against the petitioner themselves were questionable and hence it is difficult to infer how the motion could be carried through at the instance of those members whose qualifications were themselves under question. The "no confidence motion" therefore also appears to be malicious and under this background it is all the more necessary that before initiating such proceeding it should have been signed by the required number of members."

(Underlining supplied for emphasis)

22. When the notice of intention of making the motion of no confidence is expressed by a group, supposed to be comprising of the Members of the *Panchayat*, and one of them is found to be not an existing Member, the validity of the motion is knocked out at its very inception and it cannot be considered to be a valid motion at all. It is difficult to Judge and determine as to how far the objective consideration of the existing Members gets influenced by involvement of a person who is not a Member and, looking to the purport and consequences of the action, for involvement of any person other than the qualified and eligible Members, the motion cannot be said to be

free of bias and extraneous considerations. The very fact that the respondent No. 4 was privy to the motion of no confidence, in the opinion of this Court, is fatal to the tenability of the motion.

23. The motion as moved on 1-3-2007 suffers from the fundamental flaw of having been moved by the other Ward Panchas conjoint with the respondent No. 4; and the entire proceedings are required to be declared bad at the very inception. The petitioner could not have been unseated on the basis of such a motion.

24. It may be pointed out that in the meeting on the said motion, as held on 15-3-2007, 11 Members of the *Panchayat* were present, 1 Member did not participate in the voting, 9 voted in favor of the motion, and the petitioner's was the lone vote against the motion. Looking to the fact that overwhelming majority had been against the petitioner, this Court in the first place felt rather disinclined to interfere in this matter but upon noticing that the respondent No. 4 was equally a participant in moving of the motion despite her resignation having been accepted, this Court finds itself unable to sustain the validity of the proceedings of the motion of no confidence in this case.

25. Coming to the question of the order dated 14-3-2007, as pointed out above, this Court is not pronouncing on the validity or invalidity of the same but a few aspects definitely deserve comments. Under the scheme of consideration of motion of no confidence, the motion is not merely moved and voted at; but the same is specifically placed for debate and a statutory period of two hours is provided for such a debate before the motion is put to vote. If any person whose Membership is in serious question is permitted to participate in the meeting convened for the purpose of consideration of the motion and such person participates in the debate and casts the vote too, the very purity and sanctity of democratic system would be at stake. Assuming that the Government was exercising powers of revision under Section 97 of the Act of 1994 as suggested by the Government Counsel and further assuming that any alleged revision petition was pending before the Government, it was yet not a matter of granting of a routine stay; but the implication ought to have been considered and examined before issuing the stay order dated 14-3-2007. It was definitely required to be considered that if ultimately such revision petition would fail, but before decision in revision petition, if in the meantime, only because of stay order, the respondent No. 4 would be participating in debate and voting on the motion and thereby unseating an elected Member, the harm done would be irreparable. Even while granting any such stay, the other relevant factors and aspects ought to be considered and taken care of, particularly to obviate the likelihood of complications

arising because of stay order.

26. The requirement of proviso to subsection (1) of Section 97 of the Act of 1994 also makes it clear that the State Government would not pass any order prejudicial to any party unless such party had been extended reasonable opportunity of being heard in the matter. The respondent No.4 has suggested of having leveled some allegations that the petitioner fabricated the letter of resignation in her name and having lodged an FIR also. However, the FIR (Annex. R/1) was lodged by her only on 17-3-2007, much after all the relevant events in such kind of a matter, it was not expected that the entire operation of the statute and the order passed by the Vikas Adhikari were put at naught with a stay order merely on the basis of so-called affidavit of the respondent No. 4. Looking to the nature of allegations sought to be made by the respondent No. 4 and looking to the implications, such a stay order, in the opinion of this Court, ought not to have been passed without extending an opportunity of hearing to the petitioner. Be that as it may, as aforesaid, looking to the subject matter of this writ petition, this Court is not finally pronouncing on the said stay order dated 14-3-2007 because, as noticed, despite such stay order, the motion of no confidence moved on 1-3-2007 cannot sustain itself. The proceedings on such motion deserve to be quashed.

27. In relation to the order dated 14-3-2007 and the status of the respondent No.4, in the overall facts and circumstances of the case, it appears appropriate that without interfering with the said order dated 14-3-2007, the State Government be required to decide the matter as allegedly moved by the respondent No.4 after extending an adequate opportunity of hearing to all the concerned parties including the petitioner with a reasoned speaking order within 30 days from the date of appearance of the parties to be fixed hereafter.

28. Accordingly, this writ petition succeeds and is allowed to the extent that the proceedings on the motion of no confidence against the petitioner as concluded by the meeting dated 15-3-2007 are declared illegal and are hereby quashed. As a necessary consequence, the petitioner shall be entitled to function as the Sarpanch, Gram *Panchayat*, Gandheli in accordance with law.

29. The petitioner and the respondent No. 4 shall stand at notice to appear before the concerned Dy. Secretary in *Panchayati Raj* Department of the Government of Rajasthan, who had issued the order dated 14-3-2007, for further proceedings in the matter on 11-5-2009; and such proceedings shall be concluded within 30 days of the date of appearance of the parties.

30. Having regard to the circumstances of the case, there shall be no order as to costs of this writ petition.

Petition allowed.

Cases Referred.

1. 1997 (3) RLW 2049
2. 1998(3) WLC 672: (AIR 1998 Raj 306)